Supreme Court, U.S.
FILED
NOV 2 1994
OFFICE OF THE CLERK

No. 94-32

**IN THE**
**SUPREME COURT OF THE UNITED STATES**
OCTOBER TERM, 1994

---

ALLSTATE INSURANCE COMPANY,
Respondent,

v.

FRANK S. DEUS and

VOORHIES & LABBÉ,
Respondent.

---

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

---

# RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

---

H. LEE LEONARD (Bar Roll No. 8527)
KEITHA A. LEONARD (Bar Roll No. 8529)
**LEONARD & LEONARD, LTD.**
Post Office Box 91823
Lafayette, Louisiana 70509-1823
Telephone: (318) 233-4424
Counsel for Petitioner

## TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES . . . . . i

STATEMENT OF THE CASE . . . . . 4

ARGUMENT . . . . . 7

CONCLUSION . . . . . 14

APPENDIX A . . . . . 15

## TABLE OF AUTHORITIES

Cases

Chick Kam Choo v. Exxon Corp.,
486 U.S. 140 (1988)

Western Systems, Inc. v. Ulloa,
958 F.2d 864 (9th Cir., 1992),
cert denied ___ U.S. ___,
113 S.Ct. 970 (1993)

Statutes and Rules

28 U.S.C. Sec. 1332

28 U.S.C. Sec. 2283

## STATEMENT OF THE CASE

Frank Deus filed suit against Allstate Insurance Company in the United States District Court, Western District of Louisiana, alleging intentional infliction of emotional distress and breach of contract. A similar suit was filed in the Fifteenth Judicial District Court, Parish of Lafayette, Louisiana. The litigation proceeded in federal court and, in October, 1990, Deus served interrogatories on Allstate, requesting the names and addresses of various witnesses to the case, including certain agents and managers employed by Allstate.

A key witness at this time was James Ivy, an employee of Allstate. However, Allstate refused to provide any information concerning the whereabouts of James Ivy, and numerous discovery disputes ensued. Eventually, in January, 1991 the Magistrate for the Western District Court ordered Allstate to produce the requested information. However, discovery disputes continued, and it was not until approximately November of 1991 that Allstate finally provided information to Plaintiff concerning the current location of James Ivy.

Shortly thereafter, i.e. on November 25, 1991, James Ivy's deposition was taken in Mississippi. At this time, it became clear from Ivy's testimony that Allstate had committed a fraud on Plaintiff, in addition to intentionally inflicting emotional distress on Plaintiff, and breaching his contract. (Before James Ivy's deposition, Plaintiff had no specific evidence to show that Allstate had actually defrauded him as that cause of action is defined under Louisiana law.) On January 9, 1992, a little over one month after Ivy's deposition was taken, Plaintiff amended his petition to assert a cause of action for fraud, and to allege the specific facts upon which the claims of fraud were based.

On January 21, 1992, Allstate objected to the filing of Plaintiff's amending petition. Allstate argued that, when it conducted discovery during the course of the litigation, it had not been defending itself against the entirely new and separate allegations of fraud and, if Plaintiff was allowed to amend his petition, it would have to retake various depositions. On February 11, 1992, the district court signed an order disallowing the assertion of Plaintiff's fraud claims, without assigning any reasons for doing so.

Only after the district court denied Plaintiff the opportunity to assert his fraud claims did Plaintiff amend his state court petition to assert the fraud. Two additional defendants were also named in the amended state court petition; from Ivy's testimony, it was clear that these two individuals, in addition to Allstate, were intimately involved in the fraud.

After a trial on the merits that did not include any allegations or evidence concerning Allstate's fraud on Plaintiff, a jury found in favor of Plaintiff on the intentional infliction of emotional distress claim. Several months later, after first denying Allstate's 5 )(a) motion for judgment as a matter of law, the district court reversed itself without warning, and granted Allstate's motion, dismissing Plaintiff's case. It later enjoined Plaintiff fro proceeding in state court, even as to the fraud claims which had not been litigated in federal court. Plaintiff appealed the entire decision of the district court, including the district court's decision to deny the filing of the amended petition. The Fifth Circuit reversed that portion of the district court's decision enjoining Plaintiff from proceeding in state court on the fraud claims, and held that, since the district court had refused to allow Plaintiff to assert his fraud claims in the federal forum, the fraud claims could not possibly be included in

the "relitigation exception" to the Anti-Injunction Act. Allstate then filed this petition for writ of certiorari to this Court.

## ARGUMENT

1. The relitigation exception to the Anti-Injunction Act does not include a situation where Plaintiff is specifically denied the opportunity to present his claims in federal court; the Fifth Circuit's decision on this issue does not illustrate any conflict among the Circuits concerning the Anti-Injunction Act, and specifically follows both the language and intent of Chick Kam Choo v. Exxon Corp., 108 S.Ct. 1684.

Allstate argues that the Fifth Circuit's decision in the instant case highlights a conflict among the Circuits concerning the relitigation exception to the Anti-Injunction Act, and further argues that the Fifth Circuit's decision makes the concept of res judicata inapplicable or unduly restrictive with regard to the Anti-Injunction Act. These contentions are incorrect.

### FACTUAL BASIS OF ALLSTATE'S CONTENTIONS

First, the factual basis upon which Allstate's arguments are founded must be examined. Allstate claims that Deus' fraud claims were inadequately presented because they were "untimely" filed several months before the scheduled trial date. However, neither the district court nor the Fifth Circuit Court of Appeals held that the fraud claims were untimely. The district court gave no reasons for denying Deus the right to file the claims of fraud (see order of the district court, included in Allstate's appendix to its petition for writ of certiorari), and the Fifth Circuit Court of Appeals did not at any time hold that the amended petition was untimely filed.

In fact, a review of the record shows that Deus' claims of fraud were not untimely. When the lawsuit was first filed, the available evidence indicated that the torts of intentional infliction of emotional distress and abuse of rights had occurred. It was not until a key witness, James Ivy, was deposed that the specific evidence showing fraud was uncovered. (Under Louisiana law Plaintiff cannot allege or show fraud without asserting the specific facts upon which the fraud is allegedly based.)

James Ivy was not deposed until November, 1991, approximately four and one half months before the scheduled trial date of this case, because Allstate failed and refused to provide the information necessary to locate him. Ivy was an employee of Allstate, and Plaintiff propounded interrogatories to Allstate to obtain his address. (See Plaintiff's Appendix A, Memorandum in Support of Motion to File Supplemental and Amending Petition. The interrogatories requesting the necessary information were propounded to Allstate on October 23, 1990.) Allstate refused to provide this and other information, and numerous discovery disputes ensued. After numerous conferences with the Magistrate, Allstate was ordered to produce the information, and, in approximately November of 1991, Allstate finally provided the address of James Ivy. Ivy was then deposed in his home town in Mississippi, at which time it became clear that, in addition to the other torts already asserted, Allstate had committed a fraud on Deus. The supplemental and amending petition alleging fraud was filed shortly thereafter. Thus, Deus' amending petition alleging fraud was not untimely, but was instead filed as soon as Plaintiff obtained the evidence indicating that a fraud had occurred. The fact that Ivy was not deposed until several months before trial was a direct result of Allstate's concealment and calculated delay tactics, as well as its

failure to properly and fairly respond to valid discovery requests.

## RELEVANT LAW

Allstate argues that the Fifth Circuit's decision in the instant case improperly narrows the relitigation exception to the Anti-Injunction Act. To make this argument, Allstate asserts that the Fifth Circuit's decision limits the relitigation exception of the Anti-Injunction Act to only those claims "that have actually been decided" by a federal court, thus precluding the application of the broader concept of res judicata to the relitigation exception. However, a review of the actual language of the Fifth Circuit decision indicates that this is simply not correct. The Fifth Circuit specifically stated that res judicata would ordinarily apply to bar the assertion of the fraud claims in state court, but:

> Because the district court denied Deus' petition to amend his complaint, he did not have an opportunity to litigate his fraud claims. As a result, he cannot be enjoined from arguing them to the state court. Had Deus not attempted to amend his complaint, an injunction probably would have been warranted under principles of res judicata and collateral estoppel embodied in Section 2283. See Chick Kam Choo 486 U.S. at 147, 108 S.Ct. at 1690. Under Jackson, "claim" is defined broadly to include "all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transactions, or series of connected transactions, out of which the action arose." Jackson, 862 F. 2d at 501

(adopting definition of RESTATEMENT (SECOND) OF JUDGMENTS SECTION 24). Thus any claims that he did not try to assert could have been enjoined. 15 F. 3d at 524, Deus v. Allstate.

Although a conflict may ultimately exist among the Circuits concerning the relitigation exception to the Anti-Injunction Act, this case does not fall within that conflict, and is not the proper case to review and resolve that conflict. In conjunction with the Ninth Circuit, the Fifth Circuit has indicated that, under the appropriate circumstances, both collateral estoppel and res judicata are included within the relitigation exception to the Anti-Injunction Statute. However, as the Fifth Circuit recognized in the instant decision, even if Chick Kam Choo, supra, allows or requires the application of res judicata to the relitigation exception, res judicata cannot apply to the instant case, since Deus made a good faith effort to assert his fraud claims in federal court, but was not allowed to do so. The fraud claims were not claims which were asserted, or could have been asserted, in the instant litigation. (It was Allstate itself that objected to Plaintiff's assertion of his fraud claims in the federal forum, and refused to consent to the assertion of all of Plaintiff's claims in the federal court litigation.)

The Fifth Circuit's decision in the instant case merely tracks the language in **Chick Kam Choo**, supra, and follows the intent of the Anti-Injunction Act. As this Court stated in Chick Kam Choo, the relitigation exception to the Anti-Injunction Act protects only what a federal judgment actually says, not what it was intended to say.

Allstate also attempts to use Western Systems, Inc. v. Ulloa, 958 F. 2d 864 (9th Circuit 1992) to argue that res judicata requires this Court to bar Deus from litigating his fraud claims in state court. However, as Western Systems, supra, itself points out, res judicata only applies to claims which were asserted or **could** have been asserted in federal court. In the instant case, although Deus attempted to assert his fraud claims in federal court, the district court specifically denied Deus this opportunity, and refused to allow these claims to be filed. Thus, Deus' fraud claims **could not** be asserted in federal court, and res judicata has no effect on these claims.

(Likewise, as Western Systems, supra, points out, res judicata has no effect on claims which are not asserted due to the misrepresentation or concealment of the opposing party. As outlined above, and as evidenced by the court record, Plaintiff did not find out about the fraud claims until late in the litigation because of Allstate's specific refusal to provide the requested information. Also, as the Ninth Circuit in Western Systems, supra, stated, "[U]nder the compelling circumstances of [that] case", where the litigation had been ongoing for seventeen years, and Plaintiffs clearly had knowledge and notice of all claims asserted in the subsequent state court litigation, an injunction was proper under Chick Kam Choo. This was certainly not the case in the instant litigation.)

Two final points should be noted here. Allstate asserts in its brief to this Court that Deus did not appeal the district court's denial of its motion to file the amending and supplemental petition alleging fraud. Again, this is not correct. Deus appealed the entire judgment of the district court, which necessarily included the order denying the motion to amend. Due to space limitations in Deus' brief to the Fifth Circuit, this

issue was not dealt with at great length; however, based on Deus' appeal of this issue, the Fifth Circuit addressed the issue in its opinion. And, Deus can hardly be accused of forum shopping when he first attempted to assert the fraud claims in federal court, but was disallowed from doing so. The state court petition setting forth the allegations of fraud was filed only after the federal district court, at Allstate's urging, refused to allow Deus to assert the allegations in federal court.

In conclusion, Deus' fraud claims were not "inadequately presented" or presented in an untimely fashion, and this case does not illustrate any conflict between the Ninth Circuit's interpretation of Chick Kam Choo, supra, and the interpretation of other Circuits.

2. Deus' fraud claims are entirely separate and distinct from the claims actually litigated in the federal court lawsuit; a decision on the merits of the claim of intentional infliction of emotional distress does not in any way preclude a separate, and perhaps different, decision on the merits of any fraud claims.

Allstate next argues that the federal court's decision on the issues of intentional infliction of emotional distress "necessarily dictates" the outcome of any state court litigation on fraud. This argument is directly contrary to the argument that Allstate made at the trial level, when it urged the district court to disallow the filing of the amended petition alleging fraud. At the trial level, Allstate argued to the district court that, because the elements of fraud were so different from the elements required to show intentional infliction of emotional distress, it would have to retake the numerous depositions it had already taken in the case in order to defend against these new allegations of fraud. (See copy of Allstate's Memorandum in Opposition to

Plaintiff's Motion For Leave to File Third Supplemental and Amending Petition and Motion For Sanctions, attached to the Intervenor's Response to Allstate's Petition for Writ of Certiorari as Appendix A.) In fact, the elements and facts needed to prove fraud under Louisiana law are entirely different than those required to prove intentional infliction of emotional distress.

Additionally, in granting Allstate's 50(a) motion, the district court only held that, in its opinion, the evidence was insufficient to show that Allstate actually intended to inflict emotional distress on Deus. The district court's decision did not in any way address whether Allstate had committed a fraud upon Plaintiff; whether Allstate committed a fraud upon Plaintiff has not yet been litigated. (Under Louisiana law, an entity can perpetrate a fraud on an individual without also intending to inflict emotional distress upon him, and claims of fraud require entirely separate facts and elements of proof from those required when the tort of intentional infliction of emotional distress is alleged.) Therefore, the federal court's decision on the merits of the claim for intentional infliction of emotional distress cannot support an injunction against the state court suit for fraud, under the clear mandate of the Anti-Injunction Act and the language of Chick Kam Choo, supra.

## CONCLUSION

The Fifth Circuit followed the language and meaning of Chick Kam Choo, supra, and the Anti-Injunction Act when it enjoined Deus from relitigating only those claims which were asserted in federal court, and/or which he was allowed to assert in federal court. The Fifth Circuit's decision does not highlight any specific conflict between Ninth and other Circuits concerning the relitigation exception, and, factually, this case does not illustrate a situation in which Deus' unlitigated claims were "inadequately presented." For these reasons, Plaintiff submits to the Court that a writ of certiorari in this case on this narrow issue is unwarranted.

Respectfully submitted,

KEITHA A. LEONARD (Bar Roll No. 8529)
H. LEE LEONARD (Bar Roll No. 8527)
**LEONARD & LEONARD, LTD.**
Post Office Box 91823
Lafayette, Louisiana 70509-1823
Telephone: (318) 233-4424
Counsel for Petitioner

**APPENDIX A**

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE-OPELOUSAS DIVISION**

**FRANK S. DEUS : DOCKET NUMBER: 88-2099**
**VERSUS : JUDGE SCOTT**
**ALLSTATE INS. CO. : MAGISTATE METHVIN**

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

**MOTION FOR LEAVE TO FILE**
**THIRD SUPPLEMENTAL AND AMENDING PETITION**

NOW INTO COURT, through undersigned counsel, comes plaintiff, FRANK DEUS, and considering the merits of the foregoing memorandum in support hereof, plaintiff moves the court for an order allowing him to file the attached Third Supplemental and Amending Petition. Plaintiff would note herein that defendant objects to the filing of this petition. However, as set forth in the memorandum which accompanies this motion, plaintiff would show that the filing of this Third Supplemental and Amending Petition would not unduly delay this matter.

Respectfully submitted:

**LEONARD & LEONARD, LTD.**
**H. LEE LEONARD (#8527)**
**KEITHA A. LEONARD**
Post Office Box 91823
2448 Johnston Street
Lafayette, LA 70509-1823
(318) 233-4424

BY: **/s/H. LEE LEONARD**
KEITHA A. LEONARD
ATTORNEYS FOR FRANK S. DEUS

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE-OPELOUSAS DIVISION**

**FRANK S. DEUS : DOCKET NUMBER: 88-2099**
**VERSUS : JUDGE SCOTT**
**ALLSTATE INS. CO. : MAGISTATE METHVIN**
* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENTAL AND AMENDING PETITION**

MAY IT PLEASE THE COURT:

Plaintiff is seeking an order from this Court, allowing it to amend and/or supplement its original petition with information and facts only recently obtained through the deposition of James Ivy. The relevant facts leading to Mr. Ivy's valuable testimony are as follows:

On October 23, 1990, plaintiff requested a list of agents and managers in the Louisiana area, as well as their last known addresses, knowing that this information would be important to developing plaintiff's case, since many of these agents/managers could be witnesses. Allstate systematically refused to produce any such list, or provide any information whatsoever concerning the names and/or last known addresses of agents or managers in the Louisiana territory, including the Lafayette District. Although Allstate was finally ordered to produce such a list in January of 1991, or produce documents to show this information, Allstate still has not produced such a list, and claims that it has no idea who its employees were for the years 1985 through 1990, and has no information on their current or last known addresses.

After much prodding, Allstate finally orally provided the last known address of the former manager, James Ivy. The last known address happened to be in Oxford, Mississippi, and once Allstate finally provided this information, plaintiff was able to track Mr. Ivy down, and schedule his deposition. The information concerning Ivy's whereabouts was provided to plaintiff by Allstate in approximately November of 1991. It should be pointed out that it is most likely that Allstate at all times knew the whereabouts of Ivy, since Ivy had an EEOC claim against Allstate, and that EEOC claim is still pending. At the very minimum, Allstate could have provided the same of Ivy's attorney, through which plaintiff's counsel could have obtained Ivy's last known address much earlier in this litigation.

In any event, once Ivy was finally tracked down and the deposition of James Ivy was taken in Oxford, Mississippi in late November 1991, plaintiff was able to develop additional facts which fully support all aspects of this claim, and further, which indicate that Allstate has defrauded plaintiff. Specifically, James Ivy testified that Allstate manipulated, "finagled", and "played with" Frank Deus' peer groups, to falsely make it appear as though Frank Deus was on the bottom of these peer groups. Deus was then placed on corrective review, in violation of his contract, based upon the misrepresented and falsified data.

The testimony of Ivy definitely confirms that Allstate perpetrated a fraud on plaintiff, an intentional tort and/or a violation of plaintiff's contract with Allstate. Plaintiff had previously alleged facts in his petition which would assert the commission of a fraud on plaintiff; however, in an abundance of caution, plaintiff would like to amend its petition, to assert the facts recently provided by Ivy's testimony, which definitely show that fraud was committed. Plaintiff has previously alleged maliciousness, and other acts by Allstate which would constitute a fraud (see a copy of the original petition, attached hereto as

Exhibit "A"). However, since these new facts have been recently developed, which further shows fraud, plaintiff believes it would be in the interest of justice, for the court to allow plaintiff to assert these newly acquired facts relevant to fraud in its supplemental and amending petition.

Respectfully submitted:

**LEONARD & LEONARD, LTD.**
**H. LEE LEONARD (#8527)**
**KEITHA A. LEONARD**
Post Office Box 91823
2448 Johnston Street
Lafayette, LA 70509-1823
(318) 233-4424

BY: /s/**H. LEE LEONARD**
KEITHA A. LEONARD
ATTORNEYS FOR FRANK S. DEUS

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE-OPELOUSAS DIVISION**

**FRANK S. DEUS : DOCKET NUMBER: 88-2099**
**VERSUS : JUDGE SCOTT**
**ALLSTATE INS. CO. : MAGISTATE METHVIN**
* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

**PLAINTIFF'S THIRD SUPPLEMENTAL AND AMENDING PETITION**

NOW INTO COURT, through undersigned counsel, comes plaintiff, FRANK DEUS, who desires to amend and/or supplement his original complaint, by adding the following paragraphs, to-wit:

1.

By adding as paragraph 13 to the original petition, the following:

13.

Allstate Insurance Company, through its managers, including Raley, Rhodes, Artigues, and Blankenhorn, specifically, deliberately, maliciously and intentionally manipulated, fabricated, and falsified plaintiff's "peer groups", to make it appear as though plaintiff's work was unsatisfactory when, in fact, it was not. Additionally, Allstate, through its managers, Raley, Rhodes, Artigues, and Blankenhorn, used these false and fabricated "peer groups" to fraudulently and/or in bad

faith place plaintiff on "corrective review" and on "job-in-jeopardy".

2.

By adding as paragraph 14 to the original petition, the following:

14.

Specifically, in 1985, Allstate placed Frank Deus on corrective review contrary to its policies and procedures, when Frank Deus was not actually deserving of this treatment. Thereafter, in 1986, Allstate again manipulated, changed and falsified its peer groups, and threatened Frank Deus with corrective review, when he was not actually last in his true peer group.

Finally, in 1987, Allstate deliberately, intentionally, and maliciously falsified and misrepresented data to falsely make it appear that Frank Deus was last in his peer group, to permit his placement on corrective review, in violation of his contract. Subsequent thereto, Allstate maliciously and intentionally and/or recklessly placed Frank Deus on job in jeopardy, based upon falsified and fabricated data and/or results, and placed Frank Deus on job in jeopardy, contrary to Frank Deus' contract and/or Allstate's policies and procedures, rules and regulations.

3.

By adding as paragraph 15 to the original petition, the following:

15.

Additionally, in an effort to intentionally, deliberately, maliciously, recklessly, and severely emotionally harass and distress Frank Deus, Allstate Insurance Company, through its managers, took numerous actions, such as cutting back on previously promised, and contractually obligated secretarial help;

forcing Frank Deus to act as a "secretary" for the managers in his office; surrounding Frank Deus' company office with NOA offices to "squeeze" Frank Deus out of the company office, and severely restrict Frank Deus' ability to produce business; made numerous threats to plaintiff about his job; and took numerous other actions, which will be shown at the trial of this matter. These actions amounted to a bad faith breach of Frank Deus' employment contract with Allstate, as well as a fraud on Frank Deus and intentional infliction of emotional distress, through either deliberate, intentional actions, or actions so reckless, wanton and wilful that they rise to the level of intentional tort.

WHEREFORE, plaintiff prays that it be permitted to file and serve this Third Supplemental and Amending Petition, that, after proceedings had, this Third Supplemental and Amending Petition be deemed good and sufficient, and that, there be judgment on this petition and on all previous petitions, in his favor, against Allstate, taxing Allstate with all costs of these proceedings, and for all other legal, general, and equitable relief.

Respectfully submitted:

**LEONARD & LEONARD, LTD.**
**H. LEE LEONARD (#8527)**
**KEITHA A. LEONARD**
Post Office Box 91823
2448 Johnston Street
Lafayette, LA 70509-1823
(318) 233-4424

BY: /s/**H. LEE LEONARD**
KEITHA A. LEONARD
ATTORNEYS FOR FRANK S. DEUS

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE-OPELOUSAS DIVISION**

**FRANK S. DEUS : DOCKET NUMBER: 88-2099**
**VERSUS : JUDGE SCOTT**
**ALLSTATE INS. CO. : MAGISTATE METHVIN**
* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that I, counsel for plaintiff, FRANK S. DEUS, have notified opposing counsel of our intent to file a Third Supplemental and Amending petition and opposing counsel has refused to consent to the filing and granting of such motion.

Lafayette, Louisiana, this ___ day of January, 1992.

_____
KEITHA A. LEONARD

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE-OPELOUSAS DIVISION**

**FRANK S. DEUS : DOCKET NUMBER: 88-2099**
**VERSUS : JUDGE SCOTT**
**ALLSTATE INS. CO. : MAGISTATE METHVIN**
* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

**O R D E R**

On motion of plaintiff, FRANK DEUS, through his attorneys of record, H. LEE LEONARD and KEITHA A. LEONARD:

IT IS ORDERED that leave be hereby granted to Frank Deus to file his Third Supplemental and Amending Petition.

LAFAYETTE, LOUISIANA, this ___ day of _____, 1992.

_____
JUDGE

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE-OPELOUSAS DIVISION**

**FRANK S. DEUS : DOCKET NUMBER: 88-2099**
**VERSUS : JUDGE SCOTT**
**ALLSTATE INS. CO. : MAGISTATE METHVIN**
* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

SUPPLEMENTAL MOTION TO PROPOUND
MORE THAN TWENTY-FIVE INTERROGATORIES

NOW INTO COURT, through undersigned counsel, comes plaintiff, FRANK S. DEUS, who moves this Court for an Order allowing plaintiff to propound to defendant, ALLSTATE INSURANCE COMPANY, more than twenty-five (25) Interrogatories. Due to the complexity of this case, and the nature of this litigation, more than twenty-five (25) Interrogatories must be propounded in order to properly prepare plaintiff's case, as set forth in detail in the supplemental memorandum which accompanies this motion.

Respectfully submitted:

**LEONARD & LEONARD, LTD.**
**KEITHA A. LEONARD (#8529)**
Post Office Box 91823
2448 Johnston Street
Lafayette, LA 70509-1823
(318) 233-4424

BY: /s/KEITHA A. LEONARD
ATTORNEYS FOR FRANK S. DEUS

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE-OPELOUSAS DIVISION**

**FRANK S. DEUS : DOCKET NUMBER: 88-2099**
**VERSUS : JUDGE SCOTT**
**ALLSTATE INS. CO. : MAGISTATE METHVIN**
* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

ORDER

Considering the foregoing motion;

IT IS ORDERED that plaintiff, FRANK S. DEUS, be allowed to propound to defendant, ALLSTATE INSURANCE COMPANY, more than twenty-five (25) Interrogatories.

Lafayette, Louisiana, this _____ day of _____, 1991.

_____
MAGISTRATE MILDRED METHVIN

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE-OPELOUSAS DIVISION**

**FRANK S. DEUS : DOCKET NUMBER: 88-2099**
**VERSUS : JUDGE SCOTT**
**ALLSTATE INS. CO. : MAGISTATE METHVIN**
* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
MOTION TO ALLOW PLAINTIFF TO
PROPOUND MORE THAN TWENTY-FIVE
INTERROGATORIES

MAY IT PLEASE THE COURT:

Plaintiff requests that he be allowed to propound the attached Interrogatory, marked as EXHIBIT A, in addition to the two other Interrogatories which it has previously submitted to this Honorable Court. Quite some time ago, plaintiff, in a "Consolidated Outstanding Discovery Request" requested that defendant provide a "list of names and last known addresses on all managers and agents employed by Allstate in Louisiana from the years 1968 through December of 1990". Thereafter, by agreement, plaintiff limited this request to the years 1980 through 1990.

At the time that this Consolidated Outstanding Discovery Request was compiled, it was plaintiff's understanding that defendant would compile the list, even if it did not have such a list in its possession. However, defendant has recently responded, saying that it simply does not have a list and does not want to prepare one. This information is very important to plaintiff's discovery of its case, and defendant has delayed for

over a year now in terms of producing this information. Therefore, plaintiff requests that it be allowed to file this Interrogatory, in the event that there is any misunderstanding that defendant is required to produce such a list to plaintiff.

Respectfully submitted:

**LEONARD & LEONARD, LTD.**
**KEITHA A. LEONARD (#8529)**
Post Office Box 91823
2448 Johnston Street
Lafayette, LA 70509-1823
(318) 233-4424

BY: /s/KEITHA A. LEONARD
ATTORNEYS FOR FRANK S. DEUS

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE-OPELOUSAS DIVISION**

| | | |
|---|---|---|
| **FRANK S. DEUS** | : | **DOCKET NUMBER: 88-2099** |
| **VERSUS** | : | **JUDGE SCOTT** |
| **ALLSTATE INS. CO.** | : | **MAGISTATE METHVIN** |

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

**PLAINTIFF'S FOURTH SET OF**
**INTERROGATORIES TO DEFENDANT**

NOW COMES Plaintiff herein, FRANK S. DEUS, and hereby requests that Defendant answer the following Interrogatories separately and fully in writing and under oath within thirty (30) days from the date of service hereof, pursuant to Rule 33 of the Federal Rules of Civil Procedure.

In answering these Interrogatories, furnish all information available to you, including information in the possession of your attorneys, or their investigators, and all persons acting on your behalf and not merely such information known of your own personal knowledge. If you cannot answer the Interrogatories in full after exercising due diligence to secure the information, so state and answer to the extent possible, specifying you inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

The Interrogatories which follow are to be considered as continuing, and you are requested to provide, by way of supplemental answers thereto, such additional information as you or any other person acting on your behalf may hereafter obtain which will augment or other modify your answers now given to the Interrogatories below. Such supplementary responses are to be filed and served upon Plaintiff within thirty (30) days after the receipt of such information.

As used herein, the work "person" means natural persons, corporations, partnerships, sole proprietorships, unions, associations, federations, or any kind of entity.

In each question wherein you are asked to "identify" a person, state with respect to such person: (a) his name; (b) his business address and telephone number; (c) the name and address of his employer; and, (d) his relationship to you.

In accordance with Local Rule 10.1 of the Western District of Louisiana, please type your response immediately following each Interrogatory. If the space allotted is insufficient, please retype the pages, repeating each question in full, followed by the answer or objection thereto. Please return these original Interrogatories and your responses to undersigned counsel, after completing the Affidavit attached hereto.

Respectfully submitted:

**LEONARD & LEONARD, LTD.**
**KEITHA A. LEONARD (#8529)**
Post Office Box 91823
2448 Johnston Street
Lafayette, LA 70509-1823
(318) 233-4424

BY: /s/**KEITHA A. LEONARD**
**ATTORNEYS FOR FRANK S. DEUS**

**INTERROGATORY NO. 1:**

Please list the names and last known addresses of all managers and agents employed by Allstate in Louisiana for the years 1980 through 1990, and state whether said agents and/or managers are currently employed by Allstate.

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE-OPELOUSAS DIVISION**

**FRANK S. DEUS : DOCKET NUMBER: 88-2099**
**VERSUS : JUDGE SCOTT**
**ALLSTATE INS. CO. : MAGISTATE METHVIN**
* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

STATE OF LOUISIANA *
* AFFIDAVIT
PARISH OF _____ *
********************************************************

BEFORE ME, the undersigned authority, a Notary Public in and for the aforesaid Parish and State, personally came and appeared _____, a representative of Allstate Insurance Company in the above entitled and numbered cause who, after being duly sworn, did depose and state that:

He/she has read the foregoing Answers to Plaintiff's Fourth Set of Interrogatories to Defendant, and he/she swears that they are true and correct.

_____

SWORN TO AND SUBSCRIBED before me, this _____ day of _____, 19___, at _____, Louisiana.

_____
NOTARY PUBLIC